

NOV 1 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-414

CAPE PUBLICATIONS, INC. AND BUDDY BAKER
AND DUKE NEWCOME, *Petitioners,*

v.

DONALD F. ADAMS, *Respondent*

REPLY TO BRIEF FOR RESPONDENT IN
OPPOSITION

S. LINDSEY HOLLAND, JR.
CROFTON, HOLLAND, STARLING,
HARRIS & SEVERS

65 E. Nasa Boulevard
P.O. Box 459
Melbourne, Florida 32901

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-414

CAPE PUBLICATIONS, INC. AND BUDDY BAKER
AND DUKE NEWCOME, *Petitioners,*

v.

DONALD F. ADAMS, *Respondent*

**REPLY TO BRIEF FOR RESPONDENT IN
OPPOSITION**

Petitioners believe that the constitutional questions in the instant case have been fully developed in the Petition for a Writ of Certiorari, and further argument by Petitioners would be inappropriate under the rules of this Court. In the "Respondent's Brief," which Petitioners assume is meant to be a brief in opposition to the petition for certiorari, Respondent has made certain misstatements of fact and mischaracterizations of the issues which do require comment.

Contrary to the Respondent's assertion that the allegedly libelous statements are not contained in the statement of facts, the articles which contained the

alleged libels are printed in their entirety as Appendix C to the petition and specifically referred to in the Statement of the Case (Petition at 7).

While Respondent's Statement of the Facts contains vague allusions to the fact that persons, other than the reporter Newcome, verified the statements which Newcome had attributed to Wilcox, Miller and DiBassie, in his argument under Point I the Respondent maintains that: "It is apparently defendant's position then, that where the newspaper reporter says he was advised by others of the defamatory action, and the others deny advising the newspaper reporter of such information, the public official cannot recover." (Respondent's Brief at 10) Respondent's attempt to characterize this case as one in which a reporter's sources have all denied the statements attributed to them is inaccurate. While Bernard did make such denials and Wilcox's memory was hazy, Newcome's attributions of statements were verified in each instance:

The \$1,000.00 Bribe—Both St. Pierre and Sardella testified that Wilcox had indeed been quoted accurately by Newcome to the effect that Bernard had reported to Wilcox the attempted \$1,000.00 shakedown by Adams. (Petition at 10a and 11a)

The Mirror Incident—Sardella confirmed that Wilcox had told him (Sardella) of Bernard's report to Wilcox that Adams had asked for a return of the purchase price in cash. (Petition at 12a)

\$2,000.00 for Extra Work—Sardella verified the statements attributed to Mayor Miller, and Connie Bishop confirmed that Miller had accused Adams of trying to bribe him. (Petition at 13a and 15a) Additionally, Sardella and Shirley Burnett corroborated

the statements and opinions attributed to DiBassie. (Petition at 17a and 23a)

Admittedly there was conflicting testimony from Adams, Bernard and Wilcox, but, contrary to Respondent's assertion, this was not a case in which the reporter made certain statements and everyone else denied them. Newcome had made an extensive investigation and had obtained verification of every statement upon which he reported. Moreover, even a denial by the purported author of a particular statement, prior to its publication, "hardly alert[s] the conscientious reporter to the likelihood of error." *Edwards v. National Audubon Society*, 556 F.2d 113 (2d. Cir., 1977). The "actual malice" test in public official libel suits requires a clear and convincing showing that a newspaper published with knowledge of falsehood or with reckless disregard for truth or falsity. A newspaper's publication of reliable hearsay, such as occurred in the instant case, cannot constitute such "actual malice."

As was noted in *New York Times v. Sullivan*, 376 U.S. 254, 285 (1964), this Court has a duty to review the evidence to make certain that constitutional principles have been properly applied. Petitioners respectfully submit that a review of the evidence in the instant case will clearly demonstrate that the allegedly libelous articles were published without actual malice.

Respectfully submitted,

S. LINDSEY HOLLAND, JR.
CROFTON, HOLLAND, STARLING,
HARRIS & SEVERS

65 E. Nasa Boulevard
P.O. Box 459
Melbourne, Florida 32901